



PATENT

THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of)
Mark Cooper et al.) Group Art Unit: Not Yet Assigned
Serial No. 09/867,693) Examiner: Not Yet Assigned
Filing Date: May 31, 2001) Docket No. 003659.00009

For: **LYOPHILIZABLE AND ENHANCED COMPACTED NUCLEIC ACIDS**

PETITION UNDER RULE 47(a)

Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

Applicants hereby petition the Assistant Commissioner to accept the following statement of facts in lieu of a signed declaration of inventor Maureen Costello. Dr. Maureen Costello refuses to sign the declaration for the above-captioned application.

The petition fee of \$130.00 as required by 37 C.F.R. § 1.17(h) is enclosed herewith. However, if the Patent Office determines that additional fees are due, the Assistant Commissioner is hereby authorized and directed to debit our Deposit Account No. 19-0733.

11/14/2001 SDIRETR1 00000082 190733 09867693
06 FC:122 130.00 CH

RECEIVED
NOV 27 2001
OFFICE OF PETITIONS

STATEMENT OF FACTS

1. Ms. Jan Candelaria, manager, administration of Copernicus Therapeutics Inc., sent a copy of the Joint Declaration for Patent Application and Assignment to Dr. Costello by Federal Express on October 8, 2001. The papers sent by Federal Express could not be delivered to Dr. Costello. A copy of the memorandum sent with the Joint Declaration and Assignment to Dr. Costello indicates that the Joint Declaration for Patent Application and Assignment papers were enclosed for Dr. Costello's signature. See Exhibit 1. A Federal Express airbill was affixed to the Federal Express package sent to Dr. Costello on October 8, 2001. See Exhibit 2. The tracking number is indicated as 828748717952 on the top of the airbill. The tracking record of Federal Express package 828748717952 indicates that on October 9, 2001 at 09:56 the customer was not available or business was closed. See Exhibit 3. The package was returned to Ms. Candelaria because it could not be delivered to Dr. Costello. See Exhibit 4.
2. Ms. Candelaria sent a follow-up copy of the Joint Declaration for Patent Application and Assignment to Dr. Costello with a copy of the application on October 12, 2001 in a Federal Express package. See Exhibit 5. Ms. Candelaria included a memorandum in the Federal Express package. See Exhibit 6. The memorandum states that the Federal Express package contains a copy of the application with the signature pages. The Federal Express detailed tracking results indicate that the Joint Declaration for Patent Application, Assignment, and Patent Application papers were delivered on October 13, 2001 at 11:12. See Exhibit 7.
3. Dr. Costello did not return the executed documents to Ms. Candelaria.
4. I, Michelle Holmes-Son, spoke with Dr. Costello on November 12, 2001. I told Dr. Costello that I had a Federal Express tracking record that indicated that she had received the

Patent Application, Joint Declaration for Patent Application and Assignment papers for the above-mentioned application. I then asked her if she would sign the papers. Dr. Costello informed me that she "wants no part of it" and will "not sign it." She also informed me that she had previously informed Robert Moen, President and CEO of Copernicus Therapeutics, Inc., and Mark Cooper, Senior Vice President, Science and Medical Affairs of Copernicus Therapeutics, Inc., that she will not sign the papers. A copy of my contemporaneous notes of the telephone conversation with Dr. Costello is attached. See Exhibit 8.

POINT TO BE REVIEWED

The point to be reviewed is whether the above-mentioned application should be accepted as complete even though one of the inventors, Maureen Costello, refuses to sign the Joint Declaration for Patent Application.

ACTION REQUESTED

Applicants request that this petition under 37 CFR 1.47 be accepted in lieu of Dr. Costello's signed inventor's declaration and that the application be considered as fulfilling the requirements for filing a nonprovisional application.

STATEMENT OF LAST KNOWN ADDRESS

The last known address for Dr. Costello is:

102 North Mansfield Avenue
Margate City, NJ 08402

Respectfully submitted,

Date: November 13, 2001

By: Michelle L. Holmes-Son
Michelle L. Holmes-Son
Registration No. 47,660

Banner & Witcoff, Ltd.
1001 G Street, NW
Washington, DC 20001
202-508-9100

List of Exhibits

- Exhibit 1. October 8, 2001 memorandum from Jan Candelaria to Dr. Maureen Costello.
- Exhibit 2. Federal Express airbill for October 8, 2001 package.
- Exhibit 3. Tracking record of October 8, 2001 Federal Express package.
- Exhibit 4. Federal Express airbill of undelivered October 8, 2001 package.
- Exhibit 5. Federal Express airbill for October 12, 2001 package.
- Exhibit 6. October 12, 2001 memorandum from Jan Candelaria to Dr. Maureen Costello.
- Exhibit 7. Tracking record of October 12, 2001 Federal Express package.
- Exhibit 8. Notes of November 12, 2001 telephone conversation between Dr. Maureen Costello and Michelle Holmes-Son.

RECEIVED

NOV 27 2001

OFFICE OF PETITIONS



MEMORANDUM

DATE: October 8, 2001
TO: Maureen Costello
FROM: Jan Candelaria
SUBJECT: Joint Declaration and Assignment Signatures for Patent Application

Attached are copies of the Joint Declaration and Assignment pages for your signature. Please sign and return at your earliest convenience. Thanks.

Jan

FedEx® USA Airbill

Express Tracking Number

8287 4871 7952

1 From

Please print and press hard

Sender's Name JAN CALDELLAIA Phone (216) 231-0227

Sender's FedEx Account Number 1975-6305-2

Company COPERNICUS THERAPEUTICS INC

Address 11000 CEDAR AVE STE 145

City CLEVELAND State OH ZIP 44106

2 Your Internal Billing Reference

First 3 characters will appear on invoice

OPTIONAL

3 To

Recipient's Name Margaret Costello Phone (609) 882-7795

Company _____

Address 102 North Mansfield Ave

We cannot deliver to P.O. boxes or P.O. ZIP codes.

City Margate City State NJ ZIP 08402

Peel and Stick FedEx USA Airbill

See back for application instructions.

Questions? Visit our Web site at fedex.com

or call 1-800-Go-FedEx® (800) 463-3339.

By using this Airbill you agree to the service conditions on the back of this Airbill and in our current Service Guide, including terms that limit our liability.

0184317091

0215

Sender's Copy

4a Express Package Service

☒ FedEx Priority Overnight

Next business morning

Delivery commitment: Next business morning

☐ FedEx Standard Overnight

Next business afternoon

Delivery commitment: Next business afternoon

☐ FedEx 2Day

Second business day

Delivery commitment: Second business day

☐ FedEx Express Saver

Third business day

Delivery commitment: Third business day

4b Express Freight Service

☐ FedEx 1Day Freight*

Next business day

Delivery commitment: Next business day

☐ FedEx 2Day Freight

Second business day

Delivery commitment: Second business day

5 Packaging

☒ FedEx Envelope*

Includes FedEx Small Pak, FedEx Large Pak, and FedEx Specialty Pak.

Declared value limit \$200

☐ FedEx Pak*

Includes FedEx Small Pak, FedEx Large Pak, and FedEx Specialty Pak.

Declared value limit \$200

6 Special Handling

☐ SATURDAY Delivery

Available only for FedEx Priority Overnight and FedEx 2Day to select ZIP codes.

Delivery commitment: Next business day

☐ SUNDAY Delivery

Available only for FedEx Priority Overnight and FedEx 2Day to select ZIP codes.

Delivery commitment: Next business day

☐ RESTRICTIONS

Available only for FedEx Priority Overnight and FedEx 2Day to select ZIP codes.

Delivery commitment: Next business day

☐ HOLD Weekend at FedEx Location

Available only for FedEx Priority Overnight and FedEx 2Day to select ZIP codes.

Delivery commitment: Next business day

☒ No

As per attached shipping instructions

Delivery commitment: Next business day

☐ Dry Ice

Dry Ice & UN 1845

Delivery commitment: Next business day

☐ Yes

As per attached shipping instructions

Delivery commitment: Next business day

☐ CARGO

Aircraft Only

Delivery commitment: Next business day

☒ Payment Bill to:

Sender's Account No. or Credit Card No. below.

Delivery commitment: Next business day

☐ Recipient

Third Party

Delivery commitment: Next business day

☐ Credit Card

Card No. in Section 1 will be billed.

Delivery commitment: Next business day

☐ Cash/Check

Delivery commitment: Next business day

☐ Total Packages

Total Weight

Total Declared Value*

1 216.02 \$.00

FedEx (Use Only)

☐ Release Signature

Sign to authorize delivery without obtaining signature.

Delivery commitment: Next business day

☐ Signature

Delivery commitment: Next business day

☐ Signature

Sign to authorize delivery without obtaining signature.

Delivery commitment: Next business day

☐ Signature

Delivery commitment: Next business day

☐ Signature

Sign to authorize delivery without obtaining signature.

Delivery commitment: Next business day

☐ Signature

Delivery commitment: Next business day

☐ Signature

Sign to authorize delivery without obtaining signature.

Delivery commitment: Next business day

☐ Signature

Delivery commitment: Next business day

☐ Signature

Sign to authorize delivery without obtaining signature.

Delivery commitment: Next business day

☐ Signature

Delivery commitment: Next business day

☐ Signature

Sign to authorize delivery without obtaining signature.

Delivery commitment: Next business day

☐ Signature

Delivery commitment: Next business day

☐ Signature

Sign to authorize delivery without obtaining signature.

Delivery commitment: Next business day

☐ Signature

Delivery commitment: Next business day

☐ Signature

Sign to authorize delivery without obtaining signature.

Delivery commitment: Next business day

☐ Signature

Delivery commitment: Next business day

☐ Signature

Sign to authorize delivery without obtaining signature.

Delivery commitment: Next business day

☐ Signature

Delivery commitment: Next business day

☐ Signature

Sign to authorize delivery without obtaining signature.

Delivery commitment: Next business day

☐ Signature

Delivery commitment: Next business day

☐ Signature

Sign to authorize delivery without obtaining signature.

Delivery commitment: Next business day

☐ Signature

Delivery commitment: Next business day

☐ Signature

Sign to authorize delivery without obtaining signature.

Delivery commitment: Next business day

☐ Signature

Delivery commitment: Next business day

☐ Signature

Sign to authorize delivery without obtaining signature.

Delivery commitment: Next business day

☐ Signature

Delivery commitment: Next business day

☐ Signature

Sign to authorize delivery without obtaining signature.

Delivery commitment: Next business day

☐ Signature

Delivery commitment: Next business day

☐ Signature

Sign to authorize delivery without obtaining signature.

Delivery commitment: Next business day

☐ Signature

Delivery commitment: Next business day

☐ Signature

Sign to authorize delivery without obtaining signature.

Delivery commitment: Next business day

☐ Signature

Delivery commitment: Next business day

☐ Signature

Sign to authorize delivery without obtaining signature.

Delivery commitment: Next business day

☐ Signature

Delivery commitment: Next business day

PULL AND RETAIN THIS COPY BEFORE AFFIXING TO THE PACKAGE.



United States

[Ship](#) [Track](#) [Rates](#) [Signature Proof](#) [Locations](#) [Pickup](#) [International Tools](#)[Home](#) | [About FedEx](#) | [Service Info](#) | [Careers](#) | [eBusiness Tools](#) | [Manage My Account](#) | [Customer Service](#) | [Site Index](#)

Select More Online Services



Search for



- ▶ [Track Shipments](#)
- ▶ [Alternate Reference Track](#)
- ▶ [Email Track](#)
- ▶ [Multi-Carrier Track](#)
- ▶ [Custom Critical](#)
- ▶ [Cargo Track](#)
- ▶ [American Freightways](#)
- ▶ [Viking Freight](#)

Track Shipments Detailed Results

[Quick Help](#)

Related Links

- ▶ [Signature Proof](#)
- ▶ [My FedEx](#)
- ▶ [FedEx Wireless Solutions](#)
- ▶ [Handheld Track](#)
- ▶ [FedEx Sidebar](#)
- ▶ [Print, Bind & Ship](#)
- ▶ [FedEx Address Checker](#)

Tracking Number 828748717952**Reference Number****Ship Date****Delivered To****Delivery Location** MARGATE CITY NJ**Delivery Date/Time****Signed For By****Service Type** Priority Letter

Tracking Options

- [Obtain a Signature Proof of Delivery](#)
- [Email these tracking results](#) to one or more recipients
- [Track More Shipments](#)



Scan Activity	Date/Time	Comments
Delivery attempt EGG HARBOR TOWNSHIP NJ	10/09/2001 09:56	Customer not available or Business closed
On FedEx vehicle for delivery EGG HARBOR TOWNSHIP NJ	10/09/2001 09:02	
Arrived at FedEx Destination Location EGG HARBOR TOWNSHIP NJ	10/09/2001 08:39	
Left FedEx Sort Facility INDIANAPOLIS IN	10/09/2001 02:54	
Held at Sort Facility INDIANAPOLIS IN	10/09/2001 02:47	
Arrived at Sort Facility INDIANAPOLIS IN	10/09/2001 00:09	
Left FedEx Ramp CLEVELAND OH	10/08/2001 23:26	
Left FedEx Origin Location BEDFORD HEIGHTS OH	10/08/2001 21:16	
Picked up by FedEx BEDFORD HEIGHTS OH	10/08/2001 17:07	

Email Your Detailed Tracking Results

Enter your email (optional), up to three email addresses as recipients, add your message, and click on **Send Email**.

From**To****To****To**

Add a message to this email.

By signing you authorize us to deliver this shipment without obtaining a signature and agree to indemnify and hold us harmless from any resulting claims.

406

1

SIS-Rev. Date 12/04-Part #15518S • © 1994-2000 FedEx • PRINTED IN U.S.A.



MEMORANDUM

DATE: October 12, 2001
TO: Maureen Costello
FROM: Jan Candelaria
SUBJECT: Joint Declaration and Assignment Signatures for Patent Application

Sorry to send a second copy but the patent attorney said I should have included a copy of the application with the signature pages. Please call if you have any questions. 216-231-0227

Jan



United States

[Ship](#) [Track](#) [Rates](#) [Signature Proof](#) [Locations](#) [Pickup](#) [International Tools](#)[Home](#) | [About FedEx](#) | [Service Info](#) | [Careers](#) | [eBusiness Tools](#) | [Manage My Account](#) | [Customer Service](#) | [Site Index](#)

Select More Online Services



Search for



- ▶ [Track Shipments](#)
- ▶ [Alternate Reference Track](#)
- ▶ [Email Track](#)
- ▶ [Multi-Carrier Track](#)
- ▶ [Custom Critical](#)
- ▶ [Cargo Track](#)
- ▶ [American Freightways](#)
- ▶ [Viking Freight](#)

Track Shipments Detailed Results

[Quick Help](#)

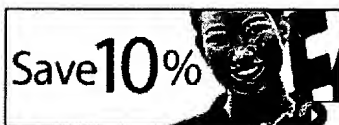
Related Links

- ▶ [Signature Proof](#)
- ▶ [My FedEx](#)
- ▶ [FedEx Wireless Solutions](#)
- ▶ [Handheld Track](#)
- ▶ [FedEx Sidebar](#)
- ▶ [Print, Bind & Ship](#)
- ▶ [FedEx Address Checker](#)

Tracking Number 828748718076
Reference Number
Ship Date
Delivered To Recipient
Delivery Location MARGATE CITY NJ
Delivery Date/Time 10/13/2001 11:12
Signed For By M.COSTELLO
Service Type Priority Pak

Tracking Options

- [Obtain a Signature Proof of Delivery](#)
- [Email these tracking results to one or more recipients](#)
- [Track More Shipments](#)



Scan Activity	Date/Time	Comments
Delivered EGG HARBOR TOWNSHIP NJ	10/13/2001 11:12	
On FedEx vehicle for delivery EGG HARBOR TOWNSHIP NJ	10/13/2001 09:14	
Arrived at FedEx Destination Location EGG HARBOR TOWNSHIP NJ	10/13/2001 09:07	
Package status EGG HARBOR TOWNSHIP NJ	10/13/2001 08:44	Package not due for delivery
Arrived at FedEx Destination Location EGG HARBOR TOWNSHIP NJ	10/13/2001 08:44	
Left FedEx Ramp PHILADELPHIA PA	10/13/2001 08:16	
Held at Sort Facility INDIANAPOLIS IN	10/13/2001 03:17	
Left FedEx Sort Facility INDIANAPOLIS IN	10/13/2001 03:15	
Left FedEx Sort Facility INDIANAPOLIS IN	10/13/2001 03:15	
Arrived at Sort Facility INDIANAPOLIS IN	10/13/2001 00:11	
Left FedEx Ramp CLEVELAND OH	10/12/2001 23:30	
Left FedEx Origin Location BEDFORD HEIGHTS OH	10/12/2001 21:19	
Picked up by FedEx BEDFORD HEIGHTS OH	10/12/2001 17:33	

Email Your Detailed Tracking Results

Enter your email (optional), up to three email addresses as recipients, add your message, and click on **Send Email**.

From

To

To

11/12

4^{ss}

Maureen Costello

wants no part of it

will not sign it

told Robert Moen &

Mark Cooper she will

not sign